

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	OAH No. 13-0689-APA
T S)	Division No.
_____)	

FAIR HEARING DECISION

I. Introduction

T S applied for Interim Assistance on February 12, 2013.¹ A disability adjudicator employed by the Division of Public Assistance (Division) concluded that Mr. S was physically impaired but that he did not qualify for Interim Assistance. The Division notified Mr. S that his application was denied. He requested a hearing.

Mr. S's hearing was held on June 7, 2013. Mr. S represented himself and testified on his own behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division. Jamie Lang, the Division's disability adjudicator, testified on behalf of the Division.

This decision concludes that Mr. S is severely physically impaired and that his impairment meets the 12-month durational requirement. However, Mr. S's physical impairment does not meet or equal the Social Security disability listings. As a result, Mr. S does not satisfy the Interim Assistance program's eligibility requirement that he be "likely to be found disabled by the Social Security Administration."² The Division's decision denying his Interim Assistance application is AFFIRMED.

II. Facts³

The following facts were established by a preponderance of the evidence.

Mr. S is 45 years old. He had a work related cervical spinal injury in 2007. He had 16 months of treatment for his injury and was released from medical treatment in 2008. He was stable until February 2013, when he injured his back due to a fall.

Mr. S has been in ongoing severe pain since his fall. He cannot move his neck. He does not need a cane or a walker to walk. However, he has difficulty walking further than a city block. He sometimes needs to use a grocery cart as a support for walking when in the grocery store.

¹ Ex. 2.

² See 7 AAC 40.180(b)(1).

³ The following facts are taken from Mr. S's testimony unless stated otherwise.

Mr. S's application for assistance was supported by a February 28, 2013 "Preliminary Examination for Interim Assistance" form. That form stated his diagnosis was severe cervical spine canal stenosis with neurological changes. The form stated he was expected to recover within six months "awaiting surgical intervention pending failure of conservative care."⁴ There is a second "Preliminary Examination for Interim Assistance" form dated May 22, 2013. That form states Mr. S's diagnosis is central and foraminal stenosis of the cervical spine. The expected recovery time was stated as six months. The form also stated that Mr. S requires cervical decompression and would possibly require an additional decompression fusion.⁵ Both of the forms were completed by Dr. Steven Humphreys.

Mr. S has had several MRIs conducted since his February 2013 accident.⁶ Dr. Humphreys summarized the findings on those MRIs in correspondence dated April 18, 2013, which stated that Mr. S's "cervical MRI suggests severe central stenosis at C5-6 and moderate central stenosis at C4-5 and C6-7 with severe foraminal stenosis bilaterally at C5-6, C6-7 and moderate stenosis at C4-5."⁷ Dr. Humphreys intended to treat Mr. S by surgery, specifically a "posterior decompression at C4-5, C5-6, and C6-7 with foraminotomy at C4-5, C5-6, and C6-7."⁸ Mr. S's recent medical examination notes indicate that his symptoms include neck pain, arm pain, radicular arm pain, and pain in the thoracic spine.⁹ He also "has some weakness and mild atrophy to his left brachioradialis and triceps."¹⁰ An electromyogram (EMG) was conducted on April 5, 2013, to determine if he had left cervical radiculopathy. The EMG results were normal. There was no electrophysiological evidence of a left cervical radiculopathy, a left brachial plexopathy, a left ulnar neuropathy around the elbow, a left median neuropathy at the wrist, or a left radial neuropathy.¹¹

The medical records show no limitations on Mr. S's ability to walk. For example, medical examination notes from April 5, 2013 state "[g]ait and [s]tation intact. Heel walk intact.

⁴ Ex. 2.59.

⁵ Ex. 2.89.

⁶ See Exs. 2.18, 2.37, 2.43.

⁷ Ex. 2.3.

⁸ Ex. 2.3.

⁹ Ex. 2.21 (April 8, 2013); Ex. 2.24 (March 14, 2013); Ex. A, p. 12 (May 23, 2013).

¹⁰ Ex. A, p. 12.

¹¹ Ex. A, p. 1.

Toe walk intact. Tandem walk intact.”¹² The medical records show that “he is in quite significant pain.”¹³

Jamie Lang, the Division’s medical reviewer, determined that Mr. S was not likely to meet the Social Security Administration’s (SSA) disability criteria based upon his spinal condition.¹⁴ The Division then denied his application for Interim Assistance.¹⁵

III. Discussion

A. The Three Step Disability Determination Process

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”¹⁶ Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.¹⁷ Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.¹⁸

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to Adult Public Assistance applicants while they are waiting for the SSA to approve their SSI application.¹⁹

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”²⁰ An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.²¹

The SSA uses a five-step evaluation process in making its disability determinations.²² Each step is considered in order.²³ The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.²⁴ The

¹² Ex. A, p. 6.

¹³ Ex. A, p. 11 (May 23, 2013).

¹⁴ Exs. 2.1a-b; 12.0 – 12.1.

¹⁵ Ex. 2.91.

¹⁶ AS 47.25.430.

¹⁷ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the SSI standards are not required to apply for SSI benefits. 7 AAC 40.170(a).

¹⁸ 7 AAC 40.030(a); 7 AAC 40.170(a).

¹⁹ 7 AAC 40.170(a) and (b); AS 47.25.455.

²⁰ 7 AAC 40.180(b)(1).

²¹ 2 AAC 64.290(e).

²² 20 C.F.R. § 416.920.

²³ Under the SSA disability determination process, an applicant who satisfies both steps one and two goes on to step three. An applicant who does not satisfy step three goes on to step four and possibly step five. 20 C.F.R. § 416.920(a)(4).

²⁴ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

first step looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the applicant is not disabled.²⁵ If the applicant is not performing "substantial gainful activity," it is necessary to proceed to step two.

The second step requires the evaluation of the severity and duration of the applicant's impairment. Medical evidence, which consists of "signs, symptoms, and laboratory findings, not only [the applicant's] statement of symptoms," is required to establish an applicant's impairment.²⁶ In order to be considered disabled, the impairment or combination of impairments must be severe²⁷ and must be expected to result in death or must have lasted or be expected to last at least 12 months.²⁸ If the impairment is not severe or does not meet the duration requirement, then the applicant is not disabled. If the impairment is severe and meets the duration requirements, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment meets or equals one of the disability listings adopted by the SSA. By regulation, the Division does not use the most current version of the SSA disability listings. Instead, it is required to use the "Social Security Administration disability criteria for the listings of impairments described in 20 C.F.R. 404, Subpart P, Appendix 1, as revised as of April 1, 2005, and adopted by reference."²⁹ If an applicant's impairment meets or equals one of the applicable SSA disability listings, the applicant is disabled³⁰ and qualifies for Interim Assistance. If the applicant's impairment does not meet or equal one of the SSA listings, the applicant does not qualify for Interim Assistance.³¹

B. Application of the Three Step Process

The Division's decision to deny Mr. S's application was based upon the review by Jamie Lang, its medical reviewer. She determined that Mr. S was not working and satisfied step one of the Social Security disability analysis. She determined that Mr. S's spinal condition also satisfied step two of the Social Security disability analysis (the condition constitutes a severe

²⁵ 20 C.F.R. § 416.920(a)(4)(i).

²⁶ 20 C.F.R. § 416.908.

²⁷ A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 C.F.R. § 416.920(c).

²⁸ 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

²⁹ 7 AAC 40.180(b)(1)(B). The SSA disability listings are located at 20 C.F.R. Pt. 404, Subpart P, Appendix 1. The version of those listings in effect as of April 1, 2005 is located online at <http://www.gpo.gov/fdsys/pkg/CFR-2005-title20-vol2/pdf/CFR-2005-title20-vol2-part404-subpartP-app1.pdf>

³⁰ 20 C.F.R. § 416.920(a)(4)(iii) and (d).

³¹ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

impairment and is expected to last for at least 12 months). She, however, determined it did not satisfy step three because it did not meet or equal the appropriate disability listing for disorders of the spine.³²

Mr. S's physician diagnosed him with central and foraminal stenosis of the cervical spine. This diagnosis comes under the SSA listing for disorders of the spine (listing 1.04).³³ The specific listing for disorders of the spine requires that Mr. S have a "compromise of a nerve root (including the cauda equina) or the spinal cord" along with other criteria.³⁴ The medical evidence in the record shows that he has severe pain, radicular arm pain, some mild muscular atrophy on his left arm, and severe central and foraminal stenosis³⁵ of the cervical spine. However, the medical evidence does not state that his nerve roots, cauda equina,³⁶ or spinal cord are compromised, nor does it contain sufficient information from which compromise can be inferred. His EMG results were normal and did not show any radiculopathy or neuropathy. There was also no medical evidence demonstrating that he was unable to walk. It is undisputed that Mr. S has a severe central and foraminal cervical spine stenosis and experiences severe pain, which limits his ability to walk and other physical activities. However, in order to meet or equal the specific SSA disability listing for the spine, there must be medical evidence showing that his nerve roots, cauda equina, or spinal cord were compromised.³⁷ As noted above, there is no medical evidence in the record showing compromise of his nerve roots, cauda equina, or spinal cord. Without that showing, he does not meet the listing, regardless of his pain levels and how they affect his physical activities. Mr. S therefore does not meet or equal the specific listing for disorders of the spine. As a result, he does not satisfy step three of the SSA disability determination process, which means he does not qualify for Interim Assistance benefits based upon his spinal condition.

³² Exs. 7 – 7.1.

³³ See 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 1.04.

³⁴ 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 1.04.

³⁵ Spinal stenosis is defined as a "narrowing of the vertebral canal, nerve root canals, or intervertebral foramina of the lumbar spine caused by encroachment of bone upon the space." *Dorland's Illustrated Medical Dictionary* 1795 (31st Ed., 2007).

³⁶ The cauda equina is "the collection of spinal roots that descend from the lower part of the spinal cord and occupy the vertebral canal below the cord." *Dorland's Illustrated Medical Dictionary* 313 (31st Ed., 2007).

³⁷ 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 1.04(C).

IV. Conclusion

Mr. S did not meet his burden of proving that he is likely to be found disabled by the Social Security Administration due to his physical impairments. As a result, the Division's decision to deny his application for Interim Assistance benefits is AFFIRMED.

DATED this 15th day of July, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 30th day of July, 2013.

By: *Signed*

Name: Lawrence A. Pederson
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]